FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CWA/167627

PRELIMINARY RECITALS

Pursuant to a petition filed July 30, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the agent of the Wisconsin Department of Health Services' Division of Long Term Care, Bureau of Long-Term Support (BLTS or Bureau), in regard to IRIS benefits, a hearing was held on October 14, 2015, by telephone. A hearing set for September 9, 2015, was rescheduled at the petitioner's request. The hearing record was held open for two days for a submission from the petitioner, which was received on October 16, 2015.

The issue for determination is whether the Department's agent correctly sought to disenroll the petitioner from the IRIS program.

There appeared at that time the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: [redacted], Quality Serv. Spec.
TMG (IRIS Consultant Agency)
Madison, WI

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. The petitioner is financially eligible for the IRIS program, and has been enrolled in the program for over a year. IRIS is a self-directed personal care program, created by a Medicaid waiver approval.

3. The petitioner, age 52, is developmentally disabled and resides with her sister, [redacted] (KB) in their home in the community. She has diagnoses of mild intellectual disability, bipolar disorder, schizophrenia, hypertension, vaginitis, and arthritis/lower back pain. The petitioner requires hands-on assistance with some activities of daily living (ADLs), such as bathing, dressing, and toileting. She is independent or can get by with verbal cueing for eating, transferring and in-home mobility. The petitioner requires assistance with all of the incidental activities of daily living -- meal preparation, medication administration and management, money management, transportation, and use of the telephone.

4. The IRIS agency became aware of allegations of the petitioner's billing for hours that were not worked, on June 18, 2015. A fraud investigation ensued, and the result was the conclusion that fraudulent billing had occurred.

5. On July 24, 2015, the IRIS agency notified the petitioner that she would be dis-enrolled from IRIS effective August 8, 2015 for "mismanaging her purchasing/employment authority with intent." The petitioner appealed from that notice.

6. The petitioner's sister, KB, is also her financial Power of Attorney. KB was working full-time as a fiscal agent for an entity known as iLife; that employment ended August 21, 2014. In her iLife employment, KB had to "swipe" in/out, and the record of her hours shows that she typically worked there from 7:30 a.m. until 4:30 p.m. From February 4 through August 21, 2015, KB billed for her performance of supportive home care (SHC) for the petitioner on multiple days per week when she was working at iLife. *E.g.*, on March 4, she billed for doing SHC from 8:00 a.m. to 5:00 p.m., and swiped in at iLife from 7:45 a.m. to 4:30p.m. *See*, Exhibit 1-F. Approximately 1,400 hours of SHC work ($16,000 in wages) were billed by KB during times when she was working at iLife.

7. The petitioner, through engagement of her power of attorney, engaged in substantiated fraud against the IRIS program in 2015. KB's testimony to the contrary was not credible.

DISCUSSION

The IRIS (Include, Respect, I Self-Direct) program operates through a waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. This Section 1915(c) waiver document is available at http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp. IRIS is a fee-for-service, self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences, and then develop a service plan based on the assessed needs. *Id.*, §441.466. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* §441.468.

Both the federal Medicaid waiver statute and the pertinent federal rule require the Department to assure that correct records are kept to assure that these public funds can be accounted for:

§ 441.302 State assurances.

Unless the Medicaid agency provides the following satisfactory assurances to CMS, CMS will not grant a waiver under this subpart and may terminate a waiver already granted:

(a) *Health and Welfare* —Assurance that necessary safeguards have been taken to protect the health and welfare of the recipients of the services. ...

(b) *Financial accountability*— The agency will assure financial accountability for funds expended for home and community-based services, provide for an independent audit of its waiver program (except as CMS may otherwise specify for particular waivers), and it will maintain and make available to HHS, the Comptroller General, or other designees, appropriate financial records documenting the cost of services provided under the waiver, including reports of any independent audits conducted.

42 C.F.R. § 441.302.

In keeping with the above demand for financial accountability, the federal waiver document referenced in the first paragraph clearly allows for involuntary participant disenrollment for mismanagement of purchasing authority:

Involuntary Termination of Participant Direction. Specify the circumstances when the State will involuntarily terminate the use of participant direction and require the participant to receive provider-managed services instead, including how continuity of services and participant health and welfare is assured during the transition:

The criteria for involuntary disenrollment from the IRIS waiver include: 1) the participant's health and safety is jeopardized; 2) purchasing authority is mismanaged; or 3) the enrollee refuses to report information necessary to adequately monitor the supports and services per his or her ISSP. The decision to involuntary disenroll a participant from the IRIS waiver remains under the direct authority of the SMA and participants are properly notified of their Fair Hearing rights.

Waiver WI.0485.R01.00, Appendix E-1: Overview (12 of 13). Note that the waiver document does not specifically require substantiated fraud for disenrollment, just purchasing authority mismanagement.

The Department's IRIS policies allow the program to end a participant's enrollment when the program substantiates mismanagement of employer authority or fraud. The Department's IRIS policy document, *IRIS Policy Manual (Manual)* available at https://www.dhs.wisconsin.gov/publications/p0/p00708a.pdf (viewed in November 2015), also calls for disenrollment for substantiated financial fraud:

7.1A.1 Involuntary Disenrollments
Business Rules
The Department of Health Services (DHS), Office of IRIS Management (OIM) reserves the right to disenroll IRIS participants based on non-compliance with IRIS policy in the following areas:

a. Failure to pay cost-share or incur spend down;
b. ...
h. Substantiated fraud;
i. Misappropriation of IRIS funds; or
j. Mismanagement of employer authority.

Manual, § 7.1A.1.

The agency's disenrollment decision is justified. The petitioner may lack the intellectual capacity to handle basic paperwork management. In such a situation her attorney-in-fact, KB, stands in petitioner's shoes. KB has clearly abused her authority and engaged in fraudulent billing. KB cannot be two places at once. She testified that she provided care for the petitioner from 5:00 – 7:25 a.m. daily, and then resumed care after returning home from iLife in the evening. She further asserted that she would provide SHC until 2:00 a.m., well after the petitioner was in bed. The assertion of post-bedtime work was not believable. And, what of the nearly complete overlap of iLife hours and SHC hours? KB explained her decision to make the times she placed in the computerized portal for SHC "hours worked" line to be daytime hours as the result of advice she got from a former IRIS consultant, [redacted]. However, IRIS operations manager [redacted] testified to his expertise with the portal, and stated that he believed it was not necessary to enter false hours as alleged by KB. Further, [redacted] has been the subject of another fair hearing before another judge in this office. He found that [redacted] also fraudulently double-billed, by billing IRIS and another employer for overlapping work hours. *See*, Decision CWA-168768 (November 9, 2015). Thus, the letter that KB submitted in support of her billing practices from [redacted] was not persuasive.

This discontinuance does not prevent the petitioner from seeking assistance through the Family Care program, which has more financial oversight (the Family Care agency handles service payments). The Family Care program can provide the petitioner with the personal care worker services that she undoubtedly needs. Wis. Admin. Code § DHS 10.41(2), Note. The petitioner should apply for Family Care and, if denied, appeal. *Id*., § 10.55(1).

CONCLUSIONS OF LAW

1. The petitioner engaged in fraud against the IRIS program beginning by at least February 2015.
2. The Department's agent correctly sought to dis-enroll the petitioner from the IRIS program.

THEREFORE, it is **ORDERED**

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison, Wisconsin, this 4th day of December, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 4, 2015.

Bureau of Long-Term Support